IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-610

John B Holway and
Motoko M Holway..... Appellants

VS

Jonathan England and
A L Devlin, dba
Featherstone Square,
a partnership..... Appellees

ON APPEAL FROM

VIRGINIA SUPREME COURT

JOHN B HOLWAY
7805 Chase Ct
Manassas Va 22110

Pro Se

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JURISDICTIONAL STATEMENT

Appellants appeal from the final order of the Supreme Court entered April 11, 1979 and reaffirmed June 8, 1979, affirming the order by Prince William County circuit court awarding disputed equipment to the appellee, and submits this statement to show that the United States Supreme Court has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of Virginia is contained in Appendix "A" to the Jurisdictional Statement.

JURISDICTION

The opinion of the Supreme Court of Virginia was delivered on April 11, 1979. A petition for rehearing was denied on June 9, 1979. No reasons were given.

The jurisdiction of the United States Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. 127 (2). The following cases sustain the jurisdiction of the Supreme Court to review the judgment by direct appeal in this case: Williams v. Bruffy, 96 U.S. 176; Lathrop v. Donohoe, 367 U.S. 820; and Marcus v. Search Warrant, 367 U.S. 717.

UNITED STATES CONSTITUTIONAL PROVISIONS VIRGINIA STATUTES AND RULES INVOLVED

The United States Constitutional Provisions involved is Amendment 14 and can be found in U.S.C.A., Constitution, Amendment 14, page 223.

Amendment 14 provides as follows:

... No state shall make or enforce any law which sh. shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Virginia statute involved is Rule 5:21 of the Virginia Supreme Court, which can be found in the Rules of the Supreme Court of Virginia.

Rule 5:21 provides in part as follows:

... The object of this salutary rule is to compel litigants to present to the Supreme Court the same objections urged upon the trial court...

The requirements of the rule are not inflexible, and may be relaxed to enable the Supreme Court to attain the ends of justice.

Another key statute involved is the Uniform Commercial Code, Volume I, Conditional Sales, paragraphs 47 and 48, which may be found on pages 56 through 65 of that volume.

Paragraph 47 provides as follows:

47. Validity at common law against purchasers, mortgagees, and pledgees from the conditional buyer...

A bona fide pledgee of the goods from the conditional buyer is not entitled to the goods at common law, in a contest with the conditional seller...

A pledgee, mortgagee, or subvendee, claiming the goods under the conditional buyer, but having notice at the time his alleged rights accrued that the buyer held under a conditional sale, obviously has no equities in his favor and is inferior to the conditional seller...

A donee of the conditional buyer is of course inferior to the conditional seller... (page 60)

48. Creditors of the conditional buyer. Creditors of the conditional buyer... stand in no stronger position than the bona fide purchaser... Those states which have declared the conditional sale valid against bona fide purchasers from the buyer, have also and for similar reasons sustained the seller in his reservation of title when he was contesting with the conditional buyer's creditors... (page 60)

The conditional seller has sometimes contested with the landlord of the buyer of the goods, the latter claiming a lien or rights under distress proceedings. In the absence of special provisions for priority in the landlord, and if the landlord is to be treated merely as havinga lien on his tenant's goods, it would seem that at common law the conditional seller should succeed in his contest with the landlord. (page 65)

QUESTIONS PRESENTED

1. Did the decesion of the Virginia Supreme Court violate the Uniform Commercial Code and alter the appellants' constitutional right to equal protection of the laws by denying their appeal, not on substantive grounds, nor on the basis of the law, but on the narrow grounds of Rule 5:21 of the Virginia Supreme Court?

S T A T E M E N T

In July 1975 the appellants sold their interest in Cardinal Productions Incorporated to John Robert Tucker for $60,000. Tucker paid $5,000 down, agreed to assume $20,000 worth of corporate debts, including $4,800 back rent owed to the appellees, and gave the appellants two notes totalling $35,000. In return for the assumption of its debts, the corporation agreed to secure the notes with a lien on the corporation's assets, $25,000 worth of theater equipment. Tucker paid the back rent, but ran up a new rental debt of approximately $8,000. He also immediately defaulted on his notes to the appellants.

In October 1975 Tucker fled the state. When appellants attempted to remove the equipment securing their lien, they were prevented by appellees.

In January 1977 appellants requested a sheriff's levy on the equipment. Appellees sued to enjoin, and the suit was heard in Prince William County circuit court, Virginia in September 1978.

In their summation, attorneys for the appellees— Mark P. Friedlander and Clifford Shoemaker— introduced a citation, Mullins v. Sturgill (191 Va 653, 1951). They twice told the court that the citation "is very clear when it says that trade fixtures annexed to the realty by the lessee and not removed within the time specified in the lease becomes a part of the realty and title thereto vests in the lessor."

Appellants requested permission from the court to inspect the citation but were not allowed to see it until after the trial had been completed. Even then, they were not allowed to see it but were merely given the page reference in Southeastern Reporter. Meantime, the court had already ruled in favor of the appellees, that is, the landlords.

Only later did appellants discover the true contents of the citation, which is diametrically opposed to the version given to the court by the appellees. The actual wording of the citation reads as follows:

"The Supreme Court of Appeals... held that the equipment in question was never intended to become a part of the realty and that plaintiffs were not divested of title thereto, even if the equipment was not removed from the premises within the time specified in original lease, and that defendants, having refused permission to remove the equipment, were liable for the value of the equipment at the time of such conversion."

The apparently deliberate lie by appellees was not discovered in time to request a rehearing within 21 days, and the court refused to permit any exceptions. Appellants therefore on October 2, 1978 filed a notice of appeal to the Virginia Supreme Court. That request was rejected without explanation on April 11, 1979, as was a request for a rehearing.

A R G U M E N T

Appellants believe that the question presented is substantial and requires plenary consideration and warrants briefs on the merits and oral arguments for resolution of the question. The reason the question is substantial is set out below.

In its notice to appellants, the Virginia Supreme Court said only that "no reversible error" was found.

Appellants, in their brief, called attention to five specific and important errors which the trial court made. In each case, the language of the citations offered is clear and unequivocal. The matter of error does not hinge on interpretations of recondite language. Nor does it turn on a choice between conflicting citations. Indeed, the appellees, in their brief, did not advance any arguments to refute the citations offered by appellants, thus conceding their validity.

Therefore, appellants infer that the phrase "reversible error" does not apply to the substantive issues raised in appellants' assignment of error. Rather, it is assumed that the errors were not regarded as "reversible" on the grounds that Rule 5:21 had not been complied with, in that the errors had not been pointed out to the trial court judge at the time they were made.

Appellants attempted to have the original court rehear the case and correct the errors, but this was denied.

It is admitted that appellants had not pointed out the errors to Judge Thornton at the moment they were made. But the apparent lie by appellees was not apparent until later. In addition, the judge was vague on just what legal grounds he based his decision on. Appellants could not point out where the judge was in error, since he himself gave no specific reasons for his ruling. Appellants did, however, inform the judge that they intended to appeal, which should have put him on alert to make sure that his decision was based on solid legal foundation.

The property in question represents a $20,000 investment by appellants, a sizable amount of their family budget. The appellees, who had possession of the equipment, have for four years derived the income from it, which has enabled them to afford full-time legal counsel in their efforts to keep the property. Appellants, deriving no income from the disputed property while struggling to pay the debt incurred in buying it, could not afford the expensive legal assistance which the landlords enjoyed.

Since they lacked financial parity, appellants had to rely on their own efforts to purusue their interests through legal channels, while at the same time working a full-time job.

A second matter came up during appellee's testimony, a matter which appellants did not realize the full implications of until after some time had elapsed for receipt and study of the transcript. This is the question of deliberate fraud on the part of Tucker, the appellees, and their attorneys.

Appellees testified that they went to Tucker November 1, 1975 after talking by phone with appellant, who was in the act of trying to recover the theater equipment under the lien. At that time, appellee testified, they received a letter from Tucker purporting to give them the $20,000 worth of theater equipment. Appellee testified that he gave Tucker nothing in return for this gift. He further testified that he took the action on advice of his attorneys, who prepared the paper which Tucker signed.

This palpable badge of fraud was overlooked in the excitement of the hearing but was fully detailed in appellants' appeal to the Virginia Supreme Court.

Further, as the transcript later made clear, Judge Thornton repeatedly evidenced a bias against the appellants, who were acting pro se, and in favor of the appellees. Seven different times Judge Thornton stepped in while appellant was questioning appellee and supplied the answers himself without permitting appellee to answer for himself. When appellant protested, he was rebuked for "arguing the case." This was also pointed out to the Virginia Supreme Court.

Finally, as the transcript also makes clear, Judge Thornton was unfamiliar with the Uniform Commercial Code provisions, as well as with the voluminous other legal citations bearing on the case. When pressed for the legal basis for his ruling in favor of appellees, he replied vaguely that it was based on "general law," part in case law, part in statutes, and "part of it up here in my head."

Rule 5:21 presupposes that legal counselors, as well as citizens acting in their own behalf, must possess legal expertise superior to that of the presiding judge. If the judge's knowledge of the law is vague or faulty, it is not he who is penalized but the citizen who comes before him for justice.

For citizens with financial resources to hire a firm of full-time legal counselors, Rule 5:21 is not unreasonable. But it discriminates against parties who cannot afford such a luxury. In effect, it requires citizens acting pro se to know more law than the judge — in effect, to be better judges than the judge— and to be aware of the rules of the Virginia Supreme Court even as they prepare a case on the circuit court level.

Rule 5:21 not only discriminates between litigants on the basis of wealth in general, it has the additional effect of discriminating against citizens whose property has been seized and in favor of citizens who have seized it, since in the latter case the party may use the income from the property to finance the legal fight to keep it. Thus the protection of the law is applied unequally, in violation of the Fourteenth Amendment.

C O N C L U S I O N

Appellants submit that for the above reasons jurisdiction should be noted and the appeal accepted for decision.

Respectfully submitted,

John B Holway
7805 Chase Ct
Manassas Va 22110

Pro Se

APPENDIX "A"

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme CourtBuilding in the City of Richmond on Wednesday the 11th day of April, 1979.

John B. Holway, et al., Appellants

against Record No. 78172
Circuit Court No. C-11161

Jonathan England, et al., Appellees

From the Circuit Court of Prince William County

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case.

A Copy,

Teste:

Allen L. Lucy, Clerk

By:
/s/Richard R. Buick
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 8th day of June, 1979.

John B. Holway, et al., Appellants,

against Record No. 781722
Circuit Court No. C-11161

Jonathan England, et al., Appellees.

Upon a Petittion for Rehearing

On consideration of the petition of John B. Holway to set aside the judgment rendered herein on the 11th day of April, 1979, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

/s/Allen L. Lucy
Clerk